

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23836 of 2000

.8.2007

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Between:

Smt.Yandapu Satyavati, W/o.Venkata Rao
And another

...Petitioners

AND

The Secretary to Government of Andhra Pradesh,
Tribal Welfare Department, Secretariat, Hyderabad
And others.

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23836 of 2000

ORDER:

This writ petition is filed assailing the order of the Government of Andhra Pradesh in G.O.Ms.No.92, dated 25.10.2000, whereby and whereunder in exercise of their powers under Section 6 of Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 (the Regulation, for brevity), they dismissed the revision petition filed by the petitioners while confirming the orders passed by the second respondent in SRA Nos.9/92 and 10/92, dated 25.4.2000, which confirmed the ejection orders passed by the Special Deputy Tahsildar (Tribal Welfare), K.R.Puram of Buttaigudem Mandal in West Godavari District (the SDT, for brevity), in SR Nos.702/90 and 862/90, dated 15.7.1992.

The petitioners are daughters of late Katari Narayana, who is a non-tribal. He executed registered settlement/ gift deed dated 10.12.1957 transferring his property equally to the petitioners. The property is agricultural land admeasuring Acs.4.39 in R.S. No.166/1 (for brevity, Item-I), Acs.3.78 in R.S.No.166/2 (for brevity, Item-II), Acs.3.60 in R.S.No.328 (for brevity, Item-III) and Acs.10.94 in R.S.No.329/1 (for brevity, Item-IV). These four items of the property is situated in Koya Rajahmundry village of Buttaigudem Mandal in West Godavari District, which is an agency area. The SDT (third respondent herein) initiated action under Section 3(2) of the Regulation and issued notice to the petitioners as to why they should not be evicted from the land as their possession is in contravention of the Regulation, as amended by Regulation I of 1970. The petitioners received the notices but did not attend the enquiry. They were set *ex parte*. The SDT recorded the deposition of Village Assistant of Rajanagaram group of villages and came to the conclusion that the petitioners' possession is in contravention of the Regulation and accordingly ordered their ejection

and further directed to restore the land to tribal pattadars or their legal heirs. The appellate authority – Agent to the Government; and the revisional authority confirmed the order.

The main contention of the petitioners before all the authorities was that Katari Reddaiah, father of Katari Narayana, purchased Items-I and II from tribals, after obtaining necessary permission from the Agent under Section 4 of the Agency Tracts Interest and Land Transfer Act, 1917, and therefore the sale transaction is not violative of any law. It is also their contention that Katari Reddaiah purchased Items-III and IV from Yelike Mutyalu, who is a non-tribal, prior to coming into force of Regulation I of 1959, as amended by Regulation I of 1970, and therefore Section 3(2) of the Regulation is not attracted.

Learned Counsel for the petitioners submits that the sale in favour of grandfather of the petitioners was effected after the vendor obtained permission under Act 1 of 1917, and therefore, the said transaction is saved. Insofar as Items-III and IV are concerned, learned Counsel would urge that though Yelike Mutyalu is non-tribal, the sale by him in favour of Katari Reddaiah on 01.5.1951 is prior to coming into force of the Regulation I of 1970 and therefore the Regulation has no application. He submits that Yelike Mutyalu is described as belonging to 'Dole' community, which is not specified as a hill tribe as per the Constitution (Scheduled Tribes) Order, 1950, and therefore Section 4 of Act 1 of 1917 is not attracted. For this proposition, he relies on the judgment of the Agent to the Government, West Godavari, Eluru, in SRA No.3/82, dated 13.7.1983, which is annexed to the writ petition. He also placed reliance on a decision of Full Bench of this Court in **Gaddam Narsa Reddy v Collector, Adilabad District**^[1] in support of the contention that sale by a non-tribal in favour of another non-tribal prior coming into force of Regulation I of 1970 is not rendered illegal or void.

Respondents have not filed counter affidavit. Learned Government Pleader for Social Welfare submits that the petitioners appeared before the SDT after receiving notices and in spite of granting sufficient time, did not produce any documents in support of their claim and therefore the SDT applied presumption under Section 3(1)(b) of the Regulation and ordered ejectment. Nextly he contends that the petitioners filed the certified extracts of sale deeds under which Katari Reddaiah purchased items-I to IV, but they did not produce copy of the orders passed by the Agent under Section 4 of Act 1 of 1917 granting permission to the tribal to sell the property in favour of Katari Reddaiah. In the absence of orders of the Agent, the sales are illegal. Lastly he contends that 'Dole'/'Dolu koya' is scheduled tribe community and therefore purchase of Items-III and IV by Katari Reddaiah from Yelike Mutyalu without permission under Section 4 of Act 1 of 1917 is void. He supports his argument relying on **Radha Bai Ananda Rao v S.Suvarna Kumar**^[2], wherein the Supreme Court

considered the question whether ‘Dole’/‘Dolu koya’ community is a scheduled tribe or not.

In view of the rival submissions and background of the case, two points arise for consideration: (1) Whether the transfer of Items I and II in favour of grand father of the petitioners, Katari Reddaiah, is not null and void? and (2) whether the sale of Items-III and IV by Yelike Mutyalu in favour of Katari Reddaiah, prior to coming into force of Regulation I of 1970 is illegal and void.

Before taking up point No.1 for consideration the particulars of sales in favour of Katari Reddaiah – grandfather of petitioners; in respect of Items-I to IV may be noticed.

Sl No	D a t e of sale deed /document	Name of the vendor	Name of the vendee	Extent of the land	R.S. No.	Village	Remarks
1.	01.10.1937	Poosam Swamy, (Tribal)	Katari Reddaiah (Non-tribal)	Acs.4.39	166/1	K.Rajahmundry	Item-I
2.	07.05.1946	Poosam Swamy, (Tribal)	- do -	Acs.3.78	166/2	K.Rajahmundry	Item-II
3.	01.05.1951	Yelike Mutyalu Dole community	- do -	Acs.3.60	328	Dolugudem H/o. K.Rajahmundry	Item-III
			- do -	Acs.10.94	329/1	- do -	Item-IV

Be it also noted that there is no denial that under registered gift deed dated 10.12.1957 Katari Narayana, S/o.Reddaiah, who inherited the properties from his father, gifted items-I to IV and other lands in favour of petitioners. The two points for consideration need to be considered keeping in view the three registered sale deeds referred to in the above table. Though the petitioners have not produced any document at the time of filing the writ petition, subsequently when the matter is heard, they filed WPMP No.17829 of 2007 praying this Court to receive Xerox copies of certified copies of three sale deeds as well as the settlement deed. They also filed endorsement dated 04.2.1998 issued by the Revenue Divisional Officer informing the petitioners that the record pertaining to two documents they requested is not available in the record room.

In Re Point No.1:

Item-I of the schedule land was purchased by Katari Reddaiah, grand father of the petitioners, under registered sale deed dated 01.10.1937. The sale deed was executed by Poosam Swamy, S/o.Lakshmaiah. He is described in the sale deed as belonging to ‘Koya’; a scheduled tribe. The registered sale deed also refers to the permission granted by Assistant Agent, Bhadrachalam Division, vide D.Dis.No.2315/35, dated 20.8.1935. Item-II was purchased by Katari

Reddaiah under registered sale deed dated 07.5.1946, again from Poosam Swamy. The Xerox copy of certified copy of sale deed dated 07.5.1946 refers to the permission granted by the Special Assistant Agent, Kovur, in L.D.Dis.No.17/SR/46, dated 04.5.1946. On the strength of these documents, learned Counsel made submissions noticed herein above.

The petitioners have not produced the proceedings dated 20.8.1935 allegedly issued by the Assistant Agent, Bhadrachalam Division, permitting Poosam Swamy to sell Item-I to Katari Reddaiah. Petitioners also have not produced the copy of the permission letter dated 04.5.1946 issued by the Special Assistant Agent, Kovur, permitting Poosam Swamy to sell Item-II to Katari Reddaiah. Indeed when the SDT was seized of the matter initiated on the complaint filed by the SDT (TW), though the notices were served on the petitioners, they did not produce any document in support of their contentions. When the appellate authority considered the cases, no doubt petitioners produced certified extracts of sale deeds in respect of Items-I and II but they did not produce the original or copy of the original under which permission was granted by the concerned Assistant Agent. The petitioners appear to have produced the endorsement given by the office of the RDO, Kovur, in C.A.No.13/98, dated 04.2.1998, informing the petitioners that record is not available. Dealing with this aspect, the appellate authority observed that the endorsement given by the RDO, Kovur, does not disclose the information whether or not permission was granted to Poosam Swamy to sell Items-I and II. While dismissing the revision petition filed by the petitioners, by impugned order, the Government also observed that the petitioners did not produce any documentary evidence in support of their claim. When admittedly the petitioners did not produce permission granted under Section 4(1) of Act 1 of 1917 permitting to sell Items-I and II in favour of Katari Reddaiah, is it permissible to give any importance and weight to such a mention in two sale deeds under which Items-I and II were transferred in favour of Katari Reddaiah, grandfather of the petitioners.

Learned Counsel for the petitioners relies on Section 90 of the Indian Evidence Act, 1872 (Evidence Act, for brevity). He would like this Court to draw a presumption as to correctness of contents of the two sale deeds in respect of items-I and II. It is no doubt true that documents under which Items-I and II were purchased by Katari Reddaiah are more than thirty years old. There cannot be any dispute that this Court can presume that the signature and other part of such document is presumed to be properly executed and attested by the person by whom it purports to have been executed. For a better appreciation, Section 90 of Evidence Act may be read.

90. Presumption as to documents thirty years old:- Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of

any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by persons by whom it purports to be executed and attested.

Explanation:- (omitted...)

(emphasis supplied)

A careful reading of Section 90 of Evidence Act would show that the presumption is with regard to the signature, handwriting and contents of the document insofar as the persons, who are parties to the document. What about third parties to the document? In the considered opinion of this Court, if an act, commission or omission or the conduct of third party to a registered document also forms part of such document, no presumption can be drawn with regard to validity or otherwise of an act, omission or conduct of such third party. In this case, therefore, it is not permissible to conclusively presume that Assistant Agent, Bhadrachalam Division, or Special Assistant Agent, Kovur, granted permission to Poosam Swamy to execute the sale deeds. This fact in issue is an independent one requiring independent proof. Though the sale by Poosam Swamy in favour of Katari Reddaiah can be presumed to have been effected, such presumption cannot be extended to the existence of a condition precedent for such sale by Poosam Swamy, a tribal, in favour of Katari Reddaiah, a non-tribal. Therefore, this Court finds force in submission of learned Government Pleader that in the absence of the copies of the permission granted by the Assistant Agent/Special Assistant Agent, the sales must be treated as void. Be it noted that under Sections 102 and 103 of Evidence Act, the burden of proof as to existence or otherwise of the permission granted by Assistant Agent lies on the petitioners because it is they who wished this Court to believe such existence. Petitioners have not discharged the burden, which lies on them. It is for the petitioners to prove the transaction is valid and no presumption can be drawn. This view is supported by the decision of this Court in **P.Ramabhadri Raju v State of A.P.**^[3]. In the said decision, His Lordship Hon'ble Justice K.Ramaswamy (as His Lordship then was) laid down as under.

Any transaction made after August 14, 1917 by the hill tribe to a non-tribal is absolutely null and void. Therefore, any person other than a hill-tribe who purchased the property from a hill-tribe has to establish that he purchased from a non-hill tribe or that the consent of the Agent was obtained. In law, there is no presumption as to when the transaction of sale or purchase has taken place. **In view of the peremptory language in Section 4(1) of the Act 1 of 1917, raising of presumption under Section 3(1)(b) of the Regulation is of little consequence and the burden is always on the purchaser to establish that the purchase was validly made.**

(emphasis supplied)

Therefore, the sale of Items-I and II properties by Poosam Swamy, a tribal, in favour of Katari Reddaiah, a non-tribal, is void under Section 4(1)

of Act 1 of 1917. This point is accordingly held against petitioners and in favour of respondents.

In Re Point No.2:

Regulation I of 1959, made by the Governor under Section 5(2) of Fifth schedule to the Constitution of India prohibiting the transfer of immovable property by a tribal in favour of a non-tribal, declares such transfer null and void. The Regulation came into force on 04.3.1959. The same however did not prohibit in *stricto sensu*, transfer of immovable property by a non-tribal to another non-tribal. This lacuna enabled many beneficiaries of such non-tribal transfers, to escape the rigour of Regulation I of 1959. The Governor then promulgated Regulation I of 1970 with effect from 03.2.1970 prohibiting transfer of immovable property by a non-tribal to another non-tribal. Transfers in favour of members of scheduled tribes are only exempted from the provision. A question was raised as to whether Regulation I of 1970 operates retrospectively. In **Gaddam Narsa Reddy** (supra), a Full Bench of this Court considered the question as to whether Regulation I of 1970, amending Section 3 of Regulation I of 1959 is retrospective or not. Answering the question in the negative, their Lordships laid down as under.

A transfer of immovable property situate in agency tracts, made after the coming into force of the A.P. Scheduled Areas Land Transfer Regulation I of 1959 or its amendment Regulation II of 1963 or Amendment Regulation I of 1970, even if made in compliance with the provisions of the Transfer of Property Act, Indian Registration Act or Hyderabad Tenancy and Agricultural Lands Act or any other law applicable thereto, is null and void, if it contravenes the provisions of S.3(2) of the said Regulation, the authorities mentioned therein can decree ejectment of the persons claiming under such transfer and pass orders restoring the lands to the transferors or their successors or pass orders for disposing of the said property as directed therein.

Section 3(1) of the Regulation I of 1959 and its amendments by Regulation II of 1963 and I of 1979 have no retrospective operation and do not affect transfers made prior to the said Regulation or its amendments coming into force and the authorities under Section 3(2) of the Regulation have no jurisdiction to pass orders in relation to the immovable property covered by such transfers.

In **S.Venkata Ramanaiah** (supra), the Supreme Court considered the question, “whether the proceedings of the Regulation I of 1959, Regulation II of 1963 and Regulation I of 1970 have retrospective effect and can affect the proceedings made prior to coming into force of the Regulation I of 1917”. Supreme Court answered the question as follows.

On a conjoint reading of Section 3(1)(a) and Section 3(2)(a), it becomes clear that the section seeks to hit the transfers effected after the section came into force and possession only under such invalid transfers is sought to be dealt with for the purpose of eviction of transferees and restoration of possession to

transferors, as the case may be, under Section 3(2)(a) of the Regulation. Consequently, the alternative submission of learned senior counsel for the authorities that even though transfer of immovable property in the Agency tracts may not be hit by section 3(1)(a) still possession under such transfers could be restored to the original transferor under Section 3(2)(a), cannot be countenanced. Section 3(2)(a) is also corollary to Section 3(1)(a) and cannot have any independent role to play. Nor can it cover any area, which is not encompassed by the sweep of Section 3(1)(a).

Therefore if the transfer of immovable property in Items-III and IV by Yelike Mutyalu in favour of Katari Reddaiah is shown to be a transfer between a non-tribal and another non-tribal before coming into force of Regulation I of 1959, the petitioners must succeed in their endeavour. Learned Counsel submits that Yelike Mutyalu is described in the sale deed dated 01.5.1951 as 'Dole'/'Dolu' community, which is not a notified hill tribe and therefore the transfer in relation to Items-III and IV does not attract the Regulation. He relied on relevant notification issued in support of the contention that 'Dole' community is not a hill tribe. He also relies on the Constitution (Scheduled Tribes) Order, 1950, which declared among others 'Koya' community as a hill tribe.

Under the relevant notification issued under Act 1 of 1917 'Koyas' are treated as hill tribes for the purpose of Act 1 of 1917 in Godavari Districts, but under the Constitution (Scheduled Tribes) Order, 1950, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956, and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, 'Koya' with its sub-sects is recognized as scheduled tribe. 'Dole'/'Dolu' community as such is not recognized. Presumably for this reason in SRA No.3/82, dated 13.7.1983, the Agent to the Government, West Godavari District, held that 'Dolu' community is not specified hill tribe. Learned Counsel for the petitioners relies on such order, though it is between different parties. The same cannot be treated as binding precedent on this Court and has to be ignored.

In **Radha Bai Ananda Rao** (supra), the Supreme Court considered a similar question. In the said case, election of petitioner as Member of Parliament from Bhadrachalam (ST) constituency was declared by the High Court of Andhra Pradesh was void on the ground that she is not a member of scheduled tribe and that she made a wrong declaration in her nomination that she belongs to 'koya', a scheduled tribe. Against the judgment of the High Court, she filed civil appeal. The Supreme Court relied on the evidence of Tahsildar, who deposed that, "there was no such caste as 'Dole' and that 'Koya' community people, who professionally beat the drums on festive occasions, are called 'Dolya'". The Supreme Court accepted his evidence and held that Radha Bai who was described as 'Doli' in various records belongs to 'Koya'. The relevant observations made by the Supreme Court are as follows.

The High Court is not given any reason for doubting the evidentiary value of Ex.A.4(c), or its correctness. Even so, it has observed in passing that entries in Exs.A4(a), A4(c) and A5(a) establish that Childem Gowraiah and his children, namely, the first respondent and her elder brother are 'dolis'. We are constrained to say that it was not permissible for the High Court to take the view that entry Ex.A.4(c) could justify the finding that the appellant and her elder brother were 'dolis' and were not koyas. As has been stated, the relevant entry read as doli koya and not as 'doli'. So when it has not been found that the entry was over-written in any respect, or was otherwise suspicious, it goes to prove that, as far back as 2/06/1924, the appellant's elder brother was recorded as 'doli koya' and not merely as 'doli'.

In this connection the evidence of M.Bhima Rao, RW.2, who was the Tahsildar of the taluk concerned, is relevant. He has categorically stated that there was no such caste as 'doli' and that "amongst the koya people who professionally beat the drums on festive occasions are called Dolya". There is no reason for us to put a different interpretation on the entry Ex.A4(c), and it shows that as far back as 2/06/1924, the appellant's brother was recorded as a person belonging to the 'koya' scheduled tribe.

In view of the above decision, it must be held that Yelike Mutyalu and two others, who executed the sale deed dated 01.5.1951 were members of a scheduled tribe and the transfer in favour of Katari Reddaiah without obtaining permission of the Agent under Section 4 of the Act 1 of 1917 is null and void. Admittedly permission was not obtained by the vendors belonging to hill tribes before transferring the property in Items-III and IV. Therefore the same is not valid.

In the result, for the above reasons, this Court does not find any infirmity in the impugned order passed by the Government confirming the orders of the Agent to the Government, who confirmed the orders of the Special Deputy Tahsildar (TW). The writ petition is dismissed, but in the circumstances of the case, there shall be no order as to costs.

August , 2007

(V.V.S.RAO, J)

NOTE:

L.R. Copy be marked.

(By order)

YS

[\[1\]](#) AIR 1982 AP 1 (FB)

[\[2\]](#) (1980) 3 SCC 169

:- NB: The Assistant Agent, Bhadra-chalam Division, allegedly granted permission in D.Dis.

No.2315/35 dated 20.8.1935

[\[3\]](#) 1987(2) ALT 118 (NRC)